

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(TOPEKA DOCKET)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. <u>03-40142-01/02-JAR</u>
)	
)	Ct. 1: 18 U.S.C. §371
DAVID C. WITTIG and)	Cts.2-15: 15 U.S.C. §78m(b)(5)
DOUGLAS T. LAKE,)	Cts.16-22: 18 U.S.C. §1343
)	Cts.23-39: 18 U.S.C. §1957
Defendants.)	Ct. 40: Forfeiture
_____)	

FIRST SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

Introduction

1) Western Resources, Inc. was originally incorporated in 1924 as a consumer services company. It operates as a public utility under the supervision of the Kansas Corporation Commission (“KCC”), supplying electric service to approximately 640,000 captive residential and commercial customers in Kansas. In 2001 Western Resources, Inc. was renamed Westar Energy, Inc. (hereinafter referred to as “Westar” or “Company”). The fiscal year end for Westar is December 31. Since at least 1997 Westar has generated more than a \$1,000,000,000 in revenues annually.

2) Because Westar is a utility and a monopoly it is subject to regulation by the KCC, whose mission is to protect the public interest through impartial, and efficient regulation of rates, service and safety of public utilities.

3) The United States Securities and Exchange Commission (“SEC”) is an agency of the United States of America. A primary duty of the SEC is to protect investors and maintain the integrity of the securities markets. Following the stock market crash of 1929, Congress passed laws to create the SEC and to require that investors receive financial and other significant information concerning securities being offered for public sale, and prohibit deceit, misrepresentations, and other fraud in the sale of securities. Congress empowered the SEC with broad authority over all aspects of the securities industry and public companies, including the requirement of filing periodic reports concerning public companies. These reports are available to the public through the SEC's EDGAR database.

4) The Electronic Data Gathering, Analysis and Retrieval system ("EDGAR") was created by the SEC in order to facilitate the electronic submission of, and rapid public access to, documents required to be filed under federal securities laws. Since 1996 all United States public companies have been subject to mandatory electronic filing in the EDGAR system.

5) Westar is a company whose stock is publicly traded on the New York Stock Exchange. As a public company, Westar is required to file periodic reports with the SEC including: the 10-K annual report, the 8-K current report, and the 14A proxy statement. The 10-K annual report is required to be filed after the end of the Company's fiscal year and is the most detailed of the required reports providing a comprehensive description of the Company's business activities, plans, management, and financial conditions. 8-K reports must be filed following important events or changes in the life of the Company such as the resignation of a director from the board of directors.

6) 14A Proxy Statements must be filed with the SEC and must contain a summary

compensation table for the chief executive officer of Westar and at least the next four most highly compensated executive officers.

7) Additionally, the laws, rules and regulations of the SEC require public companies like Westar to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company and require that the Company devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization, that transactions are recorded as necessary to permit preparation of financial statements, and to maintain accountability for assets.

8) The Social Security Administration (“SSA”) and the Internal Revenue Service (“IRS”) are agencies of the United States of America. Westar provides information to these agencies in respect to all income paid, in whatever form, to employees of the Company, which would include the defendants herein, DAVID C. WITTIG and DOUGLAS T. LAKE.

9) Westar had numerous assets, such as airplanes, which were to be used for conducting the business of the Company and for the benefit of the Company’s stockholders and ratepayers. These assets did not exist for the personal gratification and personal enrichment of the Company’s management, including defendants WITTIG and LAKE.

10) Prior to joining Westar, DAVID C. WITTIG (“WITTIG”) a defendant herein, was a managing director and investment banker at Salomon Brothers in New York, and has considerable experience with publicly traded companies. WITTIG was the account officer at Salomon for Westar. In 1995 the defendant WITTIG joined Westar as Executive Vice President of Corporate Strategy. In 1998 WITTIG rose to the position of President, Chief Executive

Officer and Chairman of the Board of Directors. In the course of his prior dealings with Westar, WITTIG learned that the Company was in effect a monopoly, enjoying a substantial annual revenue exceeding \$1,000,000,000, with a relatively small and manageable debt structure.

11) In 1998, DOUGLAS T. LAKE (“LAKE”), a defendant herein, was hired by WITTIG to join Westar as Executive Vice President of strategic planning. LAKE also became a director of Westar, and was appointed to and served on the boards of several subsidiary and affiliated corporations. LAKE was an investment banker with Bear Stearns in New York and WITTIG and LAKE had previously worked together at Salomon Brothers in New York. LAKE also has considerable experience with publicly traded companies.

12) WITTIG and LAKE, who were both paid substantial compensation by Westar, had a fiduciary duty to the Company and its shareholders to act in the shareholders’ best interest, and to conduct the Company’s business with candor and honesty, free from self-dealing and conflicts of interest. WITTIG, as President, Chief Executive Officer and Chairman of the Board of Westar, and LAKE, as a member of the Board of Westar, and an executive in charge of the strategic direction of the Company, were in charge of the day-to-day operations of Westar and were in control of substantial assets of the Company that they were required to nurture, grow and safeguard. They had the obligation to ensure that internal controls guarding against the abuse and misuse of these assets were in place and respected. They were required to act fairly and not abuse the authority entrusted to them by the shareholders for personal gain at the expense of the Company. Instead, as set forth with more detail in the Scheme portion of this indictment, WITTIG and LAKE observed weaknesses in these internal controls and oversight by former management which they exploited for their own personal gratification and enrichment.

13) Personal use of corporate assets are a fringe benefit taxable as ordinary income to employees of a company including such individuals as WITTIG and LAKE, and are required to be reported to the Internal Revenue Service. WITTIG and LAKE concealed and covered up their personal use of corporate aircraft and circumvented the internal controls of Westar causing false reports to be submitted to the SSA, IRS and SEC, agencies of the United States of America.

14) During WITTIG's brief tenure with the Company he managed to extract more than \$25,000,000 in compensation and benefits. During LAKE's brief tenure with the Company he managed to extract more than \$7,000,000 in compensation and benefits. During this same tenure WITTIG and LAKE presided over a company whose stock prices went from \$44.00 per share to less than \$9.00 per share, whose debt increased to more than \$3,000,000,000, and whose future was poised on the brink of bankruptcy.

15) On July 17, 2002, the United States Attorneys Office for the District of Kansas caused to be served on WITTIG a subpoena of the federal grand jury. This subpoena and WITTIG's subsequent testimony before the grand jury put WITTIG on notice that an inquiry was being undertaken in respect to his line of credit at Capital City Bank in Topeka and his personal use of the corporate aircraft of Westar, an asset of the Company. It was not until after this subpoena that WITTIG and LAKE ever undertook to prepare and put in place a comprehensive internal control procedure to avoid the extravagant personal use of corporate aircraft.

16) On September 17, 2002, the United States Attorneys Office for the District of Kansas issued a subpoena to Westar demanding production of documents and information relating to the use of Westar aircraft. Thereafter, numerous subpoenas followed demanding

information relating to executive compensation, the Company's proposed merger with the Public Service Company of New Mexico and its proposed rights offering for shares of Westar Industries, Inc., as well as other matters.

17) On September 27, 2002, the Board of Westar formed a special committee and hired the law firm of Debevoise & Plimpton, New York, to assist in conducting an internal investigation.

18) On November 22, 2002, WITTIG resigned from the Board and management of Westar and all subsidiaries preserving his right to make claims and seek compensation from the Company. These claims exceed \$110,000,000.

19) On December 6, 2002, LAKE resigned from all Boards and management of Westar and all subsidiaries preserving his right to make claims and seek compensation from the Company. These claims exceed \$220,000,000.

THE SCHEME:

20) Beginning with WITTIG's employment at Westar in 1995, WITTIG devised and executed a scheme and artifice to defraud Westar and its shareholders of money, funds, property and assets of the Company and the intangible right to honest services by means of a pattern of material false and fraudulent pretenses, representations, promises and omissions of material fact. Upon LAKE's employment with Westar in 1998, WITTIG and LAKE formed a conspiracy to continue the scheme, as more specifically set out hereinafter.

THE CONSPIRACY
IN VIOLATION OF TITLE 18 UNITED STATES CODE, SECTION 371

Count 1

21) Commencing in approximately 1998, with the hiring of LAKE, and continuing through at least February of 2004, the defendants herein,

**DAVID C. WITTIG and
DOUGLAS T. LAKE,**

in the District of Kansas, and elsewhere, did combine, conspire, confederate and agree to commit offenses against the United States and to defraud the United States and any agency of the United States by:

A) devising and executing, and attempting to execute, by wire communications, a scheme and artifice to defraud Westar and its shareholders of money, funds, property and assets, and the intangible right to honest services by means of a pattern of material false and fraudulent pretenses, representations, promises and omissions of material fact in violation of Title 18, United States Code, Sections 1343;

B) circumventing internal controls of Westar designed to account for use and disposition of assets to ensure accurate reporting therefore as required by law, in violation of Title 15, United States Code, Sections 78m(b)(5) & 78ff;

C) engaging in monetary transactions in property derived from specified unlawful activity in violation of Title 18 United States Code, Section 1957.

22) It was part of the object of said conspiracy and scheme to defraud that:

A) WITTIG and LAKE used sophisticated means to deprive Westar and its shareholders of the intangible right to honest services and obtain compensation, bonuses, stock, contractual rights, real and personal tangible and intangible property, including rights, privileges, interests, claims and securities, (including but not limited to reimbursement and advancement of attorneys fees) under false pretenses.

i) for WITTIG, the amount of liquidated pecuniary harm and actual and intended loss to Westar and its shareholders is approximately \$27,900,000.

ii) for LAKE, the amount of liquidated pecuniary harm and actual and intended loss to Westar and its shareholders is approximately \$9,400,000.

B) WITTIG and LAKE perverted corporate programs for their own personal profit.

C) WITTIG and LAKE sought to systematically loot Westar of money and assets.

D) WITTIG and LAKE circumvented internal controls, programs and practices designed to ensure accountability for assets.

E) WITTIG and LAKE sought to consolidate all power and authority in themselves by ridding the Board of outspoken and independent members, reducing the size of the Board when independent members would resign in protest, reducing management, conducting investigations of former employees thought to be contacting the press and KCC, and monitoring the phone calls of employees to identify individuals contacting the press and KCC.

F) WITTIG and LAKE structured a subsidiary, Westar Industries, Inc., to loot assets from the utility and leave debt behind in the utility for ratepayers.

G) WITTIG and LAKE structured employment agreements containing “change in control” provisions that allowed them to dictate the terms and timing under which they leave the Company and reap substantial rewards.

23) In furtherance and execution of the objects of said conspiracy and scheme to defraud, the defendants and conspirators committed overt acts, including, but not limited to those which follow and the substantive offenses listed hereinafter:

A) CORPORATE AIRCRAFT. Westar kept and maintained up to three corporate aircraft that were assets of the corporation and intended to be used to further the business of Westar and its subsidiaries. WITTIG and LAKE systematically used the corporate aircraft for their personal benefit, gratification and enrichment and that of their families, falsely reporting the use as being for business in the Company records, and causing false corporate reports, W-2's, and personal and corporate tax returns to be issued and/or filed. By causing the falsification of records WITTIG and LAKE avoided over \$750,000 each in compensation being attributed to them for income tax purposes. For example, from July 10 to July 19, 2002, WITTIG used the Company plane to take his family on a ten day vacation to France and England. Throughout LAKE's employment with Westar he used the Company plane as a shuttle to and from his primary residence in New York and

his vacation home in West Palm Beach, Florida. WITTIG and LAKE also obtained a third airplane capable of international travel which they concealed to avoid criticism and had to ultimately sell at a loss to the Company of approximately \$1,600,000. In the fall of 2001, the Director of Internal Audit for Westar advised WITTIG that she wanted to audit use of the corporate aircraft. WITTIG forbade her from doing the audit in order to prevent discovery of the extent of personal use of the aircraft by WITTIG and LAKE;

B) RELOCATION PROGRAM. Like many companies, Westar maintained a program to reduce the hardship for relocation of an employee's principle residence at the demand of the Company. During the relevant period in order to prevent the Company from accumulating a substantial inventory of homes, Westar agreed to pay transferring employees 15% of the appraised value of their homes. The benefit was intended to cover all of the employee's relocation costs, including brokerage fees associated with the sale of their residence to encourage the employee to sell their own home. WITTIG caused assets of the Company to be depleted in the amount of \$825,000 representing 15% of his \$5,500,000 Fifth Avenue condominium in New York, knowing that he had no intention of selling this residence. After WITTIG had been at Westar for a year and had received this \$825,000, WITTIG requested reimbursement for lodging costs while he stayed at his New York City condominium. John Hayes, the presiding CEO and Chairman of the Board did not approve this reimbursement.

LAKE caused assets of the Company to be depleted in the amount of \$262,000 representing 15% of his \$1,700,000 residence in New York, knowing that he had no intention of selling his residence. In fact much of the personal use of the corporate aircraft for LAKE resulted from him using the plane as a shuttle to and from his New York residence and Topeka;

C) ACCELERATION OF SIGNING BONUS. Prior to his employment with Westar, WITTIG negotiated a sign-on bonus for ten annual payments of \$537,000 beginning June 1, 2010, or his retirement as an officer of the Company, whichever came first. Without the knowledge or approval of the board, WITTIG caused the bonus to be accelerated and paid as a lump-sum of \$5,370,000 in 1999, which was not discounted for the present value of the money;

D) SPLIT-DOLLAR LIFE INSURANCE AGREEMENT. In 1998 Westar envisioned a plan to award insurance policies to six senior officers, including WITTIG. This plan was proposed to the board of directors as a means to defer the bonus the executives were due under the short-term incentive plan. The plan would award a portion of the bonus in cash, and use the balance to make premium payments under split-dollar policies in the form of a loan to the officer with an assignment of a collateral interest in the policy to the Company as security. The officer would be entitled to make tax-free loans against the cash surrender value

of the policy and the Company would make additional premium payments in amounts equal to the officer's tax free loans. When the officer died, the Company would receive a tax-free benefit equal to the cumulative amount of premiums that the Company had paid, and the officer's beneficiary would receive the balance. Additionally, because the portion of the proposed short-term incentive plan bonus that was used for the premium payment would not be counted as a short-term incentive award, and therefore would not be included in the calculation of supplemental executive retirement plan benefits, each officer's split-dollar policy apparently was to be funded by an additional amount representing the net present value of the lost benefits. This plan was intended to cost the company the same amount as paying the short-term incentive plan bonus.

In 1998, WITTIG received a split-dollar agreement from the Company knowing that it varied materially from the program as originally anticipated by the Westar board of directors. The Company paid a premium of \$3,445,733, more than twice the short-term incentive bonus to which he was otherwise entitled; required the Company to purchase the policy; and allowed WITTIG to sell ("put right") the policy death benefits back to Westar. WITTIG valued his put right at more than \$7,000,000 as of 2001.

E) AMENDMENT TO WITTIG'S SPLIT-DOLLAR LIFE INSURANCE AGREEMENT. On or about June 26, 2002, WITTIG caused Westar's Human Resources Committee of the Board to approve an amendment to his Split-Dollar Insurance Agreement through the pretense that WITTIG could thereby exercise his put rights in small increments when as WITTIG then and there knew he intended to exercise his put rights in large increments. Upon approval of this amendment WITTIG promptly sold or put \$4,000,000 of his death benefits to Westar receiving \$2,000,000 in cash.

F) USE OF CORPORATE COUNSEL TO ASSIST IN REMOVAL OF DIRECTORS CRITICAL OF MANAGEMENT. As of November 2000, Jane Dresdner Sadaka and Owen Leonard were members of the board of directors of Westar. At a meeting of the board in November of 2000, Sadaka and Leonard voiced objections to the employment agreements and compensation benefits for WITTIG and LAKE. Subsequently, WITTIG and LAKE directed corporate counsel to circulate a chronology of the adoption of the employment agreements, directed corporate counsel to contact Sadaka and Leonard in an effort to pressure them to drop their objections, and directed corporate counsel to attend a meeting requested by Sadaka and Leonard with WITTIG on January 31, 2001, to advise them that the contracts were enforceable. On or about January 23, 2001, when Sadaka and Leonard refused to drop their objections to the employment agreements, WITTIG and LAKE agreed on a "strategy [to] get Jane/Owen off [the] board." WITTIG and LAKE utilized and caused Westar to pay for corporate counsel in connection with this strategy, which succeeded in eliminating

dissenting and independent directors from the board. After eliminating these directors WITTIG and LAKE caused the size of the board to be reduced.

G) USE OF CORPORATE COUNSEL FOR PERSONAL EMPLOYMENT MATTERS. In furtherance of their scheme to use corporate assets for their personal gratification and enrichment, WITTIG and LAKE used and caused the use of Westar counsel to provide legal advice and assistance on personal employment matters pertaining to retention of their compensation. In late 2001, WITTIG and LAKE were tasked with the responsibility for implementing a reduction of their salaries. Instead of pursuing this from the standpoint of what was best for Westar, WITTIG and LAKE approached outside counsel for the Company seeking ways to insure that they would be kept whole for compensation payouts. On or about January 25, 2002, WITTIG and LAKE caused outside counsel to send an e-mail to them enclosing a draft of a resolution protecting WITTIG and LAKE's other compensation and asking whether it could be added to other resolutions or should exist as a freestanding resolution.

H) OBTAINING ADDITIONAL COMPENSATION DESPITE REDUCTION IN SALARIES. In addition to using corporate counsel to advise and assist them on countering reductions to salaries, WITTIG and LAKE effected a scheme to subvert the Board's direction to reduce executive compensation. Protection One is owned 87% by Westar. WITTIG and LAKE caused Protection One to pay them more than \$20,000 in director's fees knowing that Company officers serving on the Protection One Board in previous years had not received fees. Additionally, in February of 2002, WITTIG and LAKE caused Protection One to award them 125,000 Protection One options each, knowing that other directors received only 10,000 options.

I) MISUSE OF THE COMPANY LOAN PROGRAM. In 2001 Westar instituted a stock ownership program for executives and provided stock purchase loans for executives to purchase the number of shares necessary to satisfy the minimum stock ownership requirements for grants of restricted stock units. LAKE, who already met the minimum stock requirement abused the program by borrowing \$1,000,000 on December 5, 2001. LAKE then used only \$300,000 to acquire Company stock and has defaulted under the terms of the loan.

J) MISLEADING WESTAR TO AWARD RESTRICTED SHARE UNITS ("RSU's") AND SHARES OF GUARDIAN INTERNATIONAL, INC. Guardian is a home security monitoring company in Florida, in which Westar, through a subsidiary, held shares. LAKE served on the Board of Guardian and was intimately familiar with its financial situation. As of May 2001, Westar owned shares in three different classes of stock of Guardian. In November and December 2001, the Human Resource Committee of Westar was presented with a

proposal by WITTIG to issue Guardian restricted share units as long term incentive awards. The approval was the result of affirmative misrepresentations of WITTIG and LAKE. WITTIG and LAKE caused to be represented to the committee that all officers would be offered RSU's in the same series of Guardian preferred stock. WITTIG and LAKE caused officers to be notified that they would be given the option of receiving only Guardian Series D shares while WITTIG and LAKE arranged to receive Guardian Series E and D shares. The Series E shares paid a quarterly cash dividend. Those cash dividends were paid on January 1, 2002. WITTIG and LAKE caused the awards to be effective as of January 1, 2002 in order that they would receive approximately \$12,000 in cash dividends. Additionally, WITTIG and LAKE concealed from the Committee the material fact that they intended Westar to acquire Guardian through a subsidiary. A change in control would trigger redemption rights in the Series D and E shares at \$1,000 per share, or a substantial premium to the book value of the stock at the time it was awarded by the Committee. In WITTIG's case, upon redemption, stock awarded at a value of approximately \$2,793,000 would be redeemed at \$6,337,000, for a premium of approximately \$3,544,000. In LAKE's case upon redemption, stock awarded at a value of approximately \$1,656,000 would be redeemed at \$3,772,000 for a premium of approximately \$2,116,000.

K) MISLEADING THE HUMAN RESOURCES COMMITTEE AND BOARD OF WESTAR TO AUTHORIZE A RESTRICTED SHARE UNIT EXCHANGE OFFER TO CONVERT PREVIOUSLY AWARDED WESTAR RSU'S INTO UNDERVALUED GUARDIAN SHARES. In April 2002, WITTIG and LAKE rejected an offer by Guardian to redeem Guardian Series C shares as part of a plan to preserve their opportunity to acquire Series C shares of Guardian in an exchange offer. WITTIG and LAKE concealed this rejection. On or about April 16, 2002, WITTIG and LAKE proposed to the Human Resources Committee of the board of Westar an exchange offer in which Westar employees could exchange Westar RSU's for actual shares of Guardian without any vesting requirements. In making the presentation, WITTIG and LAKE concealed the material fact that they were probably the only Westar employees who were eligible to choose Guardian shares in the exchange, and falsely represented that the exchange offer would result in substantial savings for Westar. In fact the exchange offer resulted in an additional \$4,200,000 in expense or wasting of assets to Westar on the exchange of WITTIG's and LAKE's RSU's while, WITTIG received Guardian shares realizing a net additional benefit of approximately \$6,100,000, and LAKE received shares realizing a net additional benefit of approximately \$2,900,000.

L) WITTIG AND LAKE DOUBLE DIP ON GUARDIAN DIVIDENDS. On or about June 24, 2002 WITTIG and LAKE manipulated the timing of the exchange offer of Westar RSU's for Guardian shares in a manner in which they would get second quarter 2002 dividends on both allowing them to "double dip" their

investments, concealing this aspect of the exchange offer from the Human Resources Committee of the board of Westar. Through this stock manipulation and deception WITTIG realized dividends in excess of \$193,943, and LAKE realized dividends in excess of \$99,214;

M) WESTAR INVESTMENT IN QuVIS. As of December 2001, both WITTIG and LAKE had substantial personal investments in QuVis, a technology company based in Topeka, Kansas, that manufactures digital systems to record, edit and play movies and transmit them via satellite. WITTIG's wife also served on the board of QuVis. In December of 2001, without disclosing their personal financial stake in QuVis, WITTIG and LAKE caused Westar to lend \$400,000 to QuVis. QuVis ultimately defaulted on the loan.

N) UNDISCLOSED INVESTMENT IN KMF. In April 2000, WITTIG caused Westar to invest \$2,000,000 in KMF, a hedge fund in which WITTIG had a \$1,000,000 personal investment, concealing his interest in the fund, causing the depletion of more than \$1,800,000 in Westar assets.

O) FALSIFICATION OF PROXY STATEMENTS. On or about February 19, 2002, WITTIG caused minutes of the Human Resources Committee to be falsified to avoid reporting on the Westar's Proxy Statement that he had been awarded \$267,000 as a short-term incentive bonus for 2001.

P) DEPLETION OF CORPORATE ASSETS BY A LAVISH RENOVATION OF EXECUTIVE OFFICE SUITE. At a time when WITTIG was laying off hundreds of Westar employees and instituting other cost saving measures, WITTIG exploited his capital expenditure authority granted to him for the purpose of plant and facility projects to cause Westar to expend in excess of \$6,500,000 to renovate the second floor of Westar's office building at 800 South Kansas Avenue in Topeka into executive suites. This renovation included a gourmet kitchen and dining room, and a 1,000 square foot office for WITTIG equipped with a large bathroom, shower, dressing area and \$29,000 custom built television wall unit.

Q) DEPLETION OF ASSETS TO SQUELCH EMPLOYEE CONTACTS WITH MEDIA AND REGULATORS. On or about May 7, 2001, under a program denoted "Project X," WITTIG and LAKE caused Westar to contract with attorneys and The Arkin Group LLC for the purposes of investigating the sources within the Company who were contacting the media and regulators about abuses of Westar by corporate officers. As part of this process, records of employee phone calls and e-mails were reviewed and the backgrounds of employees, members of the media and regulators of the Company were investigated in an effort to squelch the truth about what was occurring within the Company. This activity depleted corporate assets by at least \$100,000.

R) OBTAINING EMPLOYEE VOTING RECORDS. On June 15, 2000, an annual meeting of shareholders of Westar was held in Topeka. On or about June 19, 2000, WITTIG learned that there had been a significant decline in employees voting in favor of management. WITTIG directed a subordinate to obtain information on how individual employees voted their shares. WITTIG utilized this information in making personnel decisions. Following the shareholder meeting in 2001, WITTIG again directed a subordinate to obtain information concerning how the approximately 120 highest paid employees in Westar voted their shares to see if they were supportive of management. This request took place in advance of the reorganization of management in the Company. WITTIG took these actions to create a climate of intimidation and discourage employees from freely exercising their rights to oppose bad management.

S) ATTEMPT TO SPLIT AND MERGE WESTAR FOR THE BENEFIT OF WITTIG AND LAKE. On or about March 2000, WITTIG and LAKE recommended to the Westar Board that management pursue a separation of the regulated utility business and its nonregulated businesses. On May 18, 2000, WITTIG and LAKE caused Westar to publicly announce that Westar would seek such a separation. On November 9, 2000, WITTIG and LAKE caused Westar to announce that it had entered into a merger agreement with Public Service Company of New Mexico. This strategy was always portrayed as one which would increase shareholder value in the Westar utility as well as the spinoff company that was to be called Westar Industries. However, the assets and liabilities were allocated between the utility and Industries such that the utility was left with virtually all of the debt and Industries was structured such that it had nearly \$1,450,000,000 in assets and virtually no debt. There was never a full disclosure to the shareholders and the investing public that the greatest beneficiaries of this merger would be WITTIG and LAKE. WITTIG was projected to realize between \$37,000,000 and \$65,000,000, while LAKE was projected to realize between \$18,000,000 and \$35,000,000 by virtue of “change-in-control” provisions to which they had manipulated into their employment agreements. Additionally, WITTIG and LAKE at the time of the merger would simply assume top executive and board positions with the non-regulated spin-off corporation, Westar Industries, with new employment agreements and a substantial ownership interest in that corporation.

T) INTENTIONAL OVER-RENOVATION OF THE LANDON MANSION. In addition to the phenomenal benefits that WITTIG and LAKE expected to realize upon the splitting up of Westar, were additional benefits derived from a provision that they caused to be added to their employment agreements. In September of 2000, WITTIG and LAKE caused to be added to their agreements, without the knowledge and approval of the board, that upon a change in control, the Company would purchase their residences from them at the higher of the appraised value or

the purchase price, plus all improvements plus 17%. WITTIG, for example, well knew that his residence has never been appraised at more than \$2 million, nonetheless, WITTIG used stock received from WESTAR under false pretenses as collateral for a line of credit at Capital City Bank in Topeka, Kansas. Using this line of credit WITTIG pumped more than \$6,000,000 into the Landon Mansion knowing that Westar would have to pay him that much and more upon a change of control in the Company.

CIRCUMVENTION OF INTERNAL CONTROLS
IN VIOLATION OF TITLE 15 UNITED STATES CODE, SECTIONS 78m(b)(5) & 78ff

- 24) Paragraphs 1 through 23 are incorporated herein by reference.
- 25) On or about the dates set forth below, in the District of Kansas, the defendants,

DAVID C. WITTIG and
DOUGLAS T. LAKE,

knowingly and wilfully circumvented and knowingly failed to implement a system of internal accounting controls and knowingly and materially falsified and caused to be falsified any book, record and account required to be kept by Westar as an issuer of a security registered pursuant to Title 15, U.S.C. Section 78l and required to file reports pursuant to Title 15, U.S.C. Section 78o(d):

Count	On or About Date	Circumvention, Failure of Implementation or Falsification	Book, Record or Account
2	2/1999	WITTIG denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Western Resources
3	2/18/1999	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Western Resources
4	3/13/2000	WITTIG denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Western Resources
5	3/20/2000	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Western Resources

Count	On or About Date	Circumvention, Failure of Implementation or Falsification	Book, Record or Account
6	3/20/2000	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Protection One
7	1/2001	WITTIG denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Western Resources
8	1/23/2001	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Western Resources
9	11/2001	WITTIG circumvented internal audit function by prohibiting internal auditor from auditing use of corporate aircraft	Internal audit records pertaining to use of corporate aircraft.
10	3/2002	WITTIG circumvented internal controls by failing and refusing to fill out	Director and Officer Annual Questionnaire for Westar Energy
11	3/2002	WITTIG circumvented internal controls by failing and refusing to fill out	Director and Officer Annual Questionnaire for Westar Industries
12	3/2002	WITTIG circumvented internal controls by failing and refusing to fill out	Director and Officer Annual Questionnaire for Protection One
13	3/25/2002	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Westar Energy
14	3/25/02	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Westar Industries
15	3/25/02	LAKE denied personal use of corporate aircraft	Director and Officer Annual Questionnaire for Protection One

WIRE FRAUD
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1343

26) Paragraphs 1 through 23 are incorporated herein by reference.

27) Having devised the aforesaid scheme and artifice to defraud in the District of Kansas and elsewhere, the defendants,

**DAVID C. WITTIG and
DOUGLAS T. LAKE,**

for the purpose of executing the aforesaid scheme and artifice, and attempting so to do, knowingly caused to be transmitted by means of wire, radio and television communication in interstate commerce, in Kansas and elsewhere, certain signs, signals, pictures and sounds, to wit: interstate telephone communications as follows:

Count	On or about Date	Transmission
16	5/11/2000	2000 Form 14A Proxy Statement, submitted electronically to the SEC
17	6/12/2001	2001 Form 14A Proxy Statement, submitted electronically to the SEC
18	5/6/2002	2002 Form 14A Proxy Statement, submitted electronically to the SEC
19	4/14/1999	1998 Form 10-K Annual Report, submitted electronically to the SEC
20	3/29/2000	1999 Form 10-K Annual Report, submitted electronically to the SEC
21	4/2/2001	2000 Form 10-K Annual Report, submitted electronically to the SEC
22	4/1/2002	2001 Form 10-K Annual Report, submitted electronically to the SEC

ENGAGING IN MONETARY TRANSACTIONS
IN PROPERTY DERIVED FROM SPECIFIED UNLAWFUL ACTIVITY
IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 & 1957

28) Paragraphs 1 through 23 are incorporated herein by reference.

29) On or about the dates set forth below, in the District of Kansas and elsewhere, the

defendants,

**DAVID C. WITTIG and
DOUGLAS T. LAKE,**

knowingly and wilfully engaged and attempted to engage in monetary transactions affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from the specified unlawful activity of wire fraud, in violation of Title 18, United States Code, Section 1343, as follows:

Count	Date	Transaction
23	7/30/2000	Increase in Wittig's line of credit to \$3,500,000 at Capital City Bank, Topeka, secured by Western Resources stock and Split Dollar insurance.
24	4/30/2001	Increase in Wittig's line of credit to \$5,000,000 at Capital City Bank, Topeka, secured by Western Resources stock and Split Dollar insurance.
25	4/30/2001	Deposit of \$1,500,000 into Wittig's account at Capital City Bank from his line of credit.
26	5/14/2001	Increase in Wittig's line of credit to \$5,500,000 at Capital City Bank, Topeka, secured by Western Resources stock and Split Dollar insurance.
27	5/14/2001	Deposit of \$500,000 into Wittig's account at Capital City Bank from his line of credit.
28	6/8/2001	Loan of \$500,000 from Capital City Bank, secured by Western Resources stock and Split Dollar insurance
29	6/8/2001	Deposit of \$500,000 into Wittig's account at Capital City Bank from his line of credit.
30	4/9/2003	sale by WITTIG of 75,000 shares of Westar stock at \$12.77 per share for \$958,053
31	4/10/2003	sale by WITTIG of 13,000 shares of Westar stock at \$12.75 per share for \$165,750
32	5/15/2003	sale by WITTIG of 31,484 shares of Westar stock at \$14.53 per share for \$457,604
33	5/15/2003	sale by LAKE of 20,000 shares of Westar stock at \$14.78 per share for \$295,600
34	5/20/2003	sale by WITTIG of 73,605 shares of Westar stock at \$14.75 per share for \$1,085,673

Count	Date	Transaction
35	7/30/2003	sale by LAKE of 5,000 shares of Westar stock at \$16.77 per share for \$83,850
36	7/31/2003	sale by LAKE of 5,000 shares of Westar stock at \$16.73 per share for \$83,650
37	1/30/2004	sale by LAKE of 4,000 shares of Westar stock at \$19.61 per share for \$78,450
38	2/12/2004	sale by LAKE of 5,000 shares of Westar stock at \$19.46 per share for \$97,298
39	2/13/2004	sale by LAKE of 10,000 shares of Westar stock at \$18.98 per share for \$189,816

Count 40

FORFEITURE

30) The allegations of the foregoing counts of this indictment, are realleged, and by this reference fully incorporated herein, for the purpose of alleging forfeitures to the United States of America, pursuant to the provisions of Title 18 United States Code, Section 981(a)(1)(C), and 28 United States Code, Section 2461(c).

As a result of the conspiracy, scheme and money-laundering alleged in the foregoing counts,

**DAVID C. WITTIG and
DOUGLAS T. LAKE**

shall forfeit to the United States all property, real and personal, involved in and derived from the aforesaid offenses and all property traceable to such property, or proceeds, including, but not limited to:

A) all base pay, in cash and stock; all Dental/Health/Life/LTD/Vision Flex Credits; car allowance; Legal/Financial/Tax Planning; Discretionary Accounts; Split Dollar Life insurance

policies, imputed income and payout; short term incentive; long term incentive; all bonuses including for real estate and moving; stock for compensation distribution; Restricted Share Award Distribution; Restricted Share Award-Deferred payout; Restricted Stock Unit Dividends - WR; Restricted Stock Unit Dividends - Guardian; and all other Western Resources, Westar, Guardian and any other stock of affiliated and subsidiary corporations.

B) The real estate known as the Landon Mansion, located at 521 Westchester Road, Topeka, Kansas 66604, the legal description of which is found in Attachment “A” to this Indictment, incorporated herein by reference.

i) \$1,974,289.20 in art and interior furnishings as more particularly described in Attachment “B” to this Indictment, incorporated herein by reference.

C) A 2001 FERRARI, 550 Maranello, VIN ZFFZS49A010122784, purchased for \$229,751.00.

D) All unpaid compensation, contract rights and benefits whatsoever granted under the terms of WITTIG and LAKE’s employment, employment agreements, Articles of Incorporation or Bylaws of the Company, including but not limited to change in control benefits, relocation benefits, and payment of legal fees and expenses, and indemnification and advancement of attorneys fees, as well as any escrow accounts containing the proceeds of the foregoing.

E) Any arbitration award granted to WITTIG and LAKE, jointly or individually, arising out of their employment at Westar and any subsidiary or affiliate company.

F) In the event any of the foregoing property: i) cannot be located upon the exercise of due diligence; ii) be transferred, sold to, or deposited with, a third party; iii) be placed beyond the jurisdiction of the Court; iv) be substantially diminished in value; or, v) be commingled with

other property which cannot be divided without difficulty, as a result of any act or omission of either defendant, the Court shall order the forfeiture of any other property of the defendants, up of the value of the property described in i) through v).

A TRUE BILL.

DATE

FOREMAN OF THE GRAND JURY

ASSISTANT UNITED STATES ATTORNEY
District of Kansas

[It is requested that trial be held in Topeka, Kansas]

The Court acknowledges the receipt of this indictment in open court.

UNITED STATES DISTRICT JUDGE